

# WATER LINES



NEWS FROM THE WATER RESOURCES DIVISION  
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION • SPRING 1997

MISSION: TO PROVIDE THE MOST BENEFIT, THROUGH THE BEST USE, OF THE STATE'S WATER RESOURCES FOR THE PEOPLE OF MONTANA

## DEPARTMENT NEWS

### MONTANA LEGISLATURE ACTS ON WATER ISSUES

OUR WINTER ISSUE OF WATER LINES LISTED A NUMBER OF LEGISLATIVE BILLS THAT WERE DRAFTED REGARDING WATER ISSUES. Now, as the 55th session of the Montana Legislature draws to a close, we are bringing you up to date on those bills. At this printing, legislators have taken the following actions:

• **HB0071 - Renewable Resource Loans for Emergencies:** An act increasing the emergency loan cap for the Renewable Resource Grant and Loan Program from \$1 million to \$10 million.

*Signed by Governor: 3/13/97*  
*Effective Date: 3/13/97*

• **HB0120 - Water Use Permits in Muddy Creek Drainage:** An act

making permit applications in the Muddy Creek drainage (Cascade and Teton Counties) an exception to the upper Missouri River basin closure. It allows a permit to be granted to use excess water to prevent significant impacts on adjoining lands. As a conservation measure, a permit is allowed if it will help control erosion in the Muddy Creek drainage.

*Signed by Governor: 4/30/97*  
*Effective Date: 10/1/97*

• **HB0283 - Water Rights Compact between the U.S. Fish and Wildlife Service and the State of Montana:** An act ratifying a reserved water rights compact between the U.S. Fish and Wildlife Service and the State of Montana to settle any and all claims to water for Black Coulee and Benton Lake National Wildlife Refuges administered by the U.S. Fish and Wildlife Service within the state of Montana. The compact is in the

process of receiving final approval from the federal Departments of the Interior and Justice.

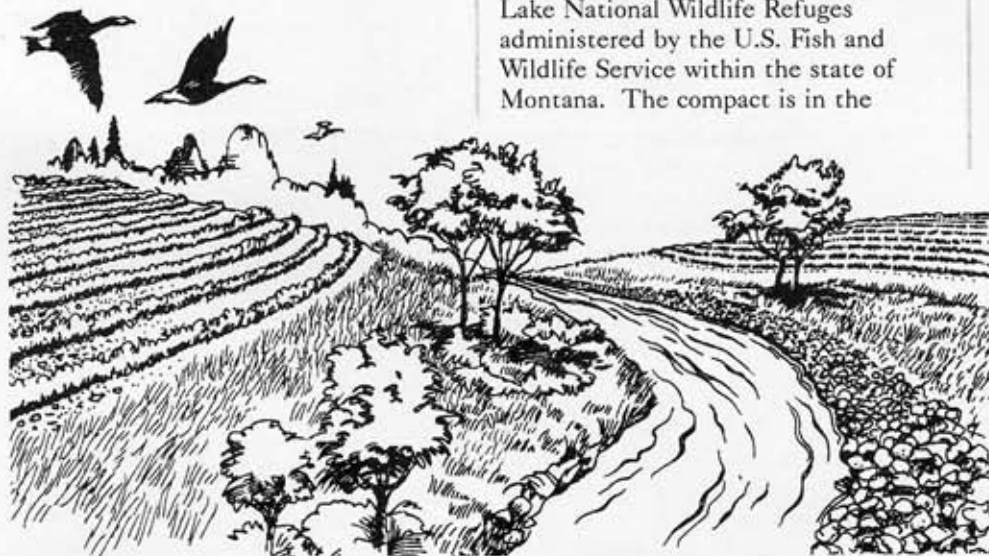
*Signed by Governor: 3/25/97*  
*Effective Date: 10/1/97*

• **HB0300 - An act appropriating money to the Department of Natural Resources and Conservation from the Renewable Resource Grant and Loan State Special Revenue Account for a grant to the Glen Lake Irrigation District for needed repairs to Costich Dam.**

*Bill Killed: 2/12/97*

• **SB0097 - Water Permits and Change Authorizations:** An act revising the Montana Water Use Act to generally negate court rulings that impacted on the Department of Natural Resources and Conservation's water permitting and change authorization processes. The bill continues the permit and change authorization processes. The act clearly distinguishes federal reserved water rights from water reservations created under state law. The permit criteria have been clarified to reflect that the agency applies a water availability test considering physical and legal availability and a defined adverse effect test. The language reflects recent department practices. The bill makes it clear that the permit process, which results in the issuance of provisional

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## PREPARING FOR SPRING RUNOFF

**T**HE WATER CONTENT OF THE SNOW IS ABOUT 60 PERCENT ABOVE NORMAL IN THE MOUNTAINS ABOVE THE MISSOURI AND THE YELLOWSTONE RIVERS, AND NEW RECORDS HAVE BEEN SET IN SOME LOCATIONS.

Snowpack in the Clark Fork, Bitterroot, and Flathead basins is 50 percent more than usual, and at least 30 percent above normal in Montana's other major river basins. Consequently, rivers and streams are likely to run very high this spring. Peak flows in some places could exceed previous all time maximums, and flooding is likely. High flows impact reservoirs and dams, as well, and can pose the threat of overtopping and washing out a dam.

DNRC's Dam Safety Program is providing data about snowpack, streamflow, and sources of weather and emergency response information. Major dam operators in Montana are already dropping reservoirs to spring-time levels well below normal, and owners of private dams are being reminded that reducing storage now will provide room to store flood flows later. The program has also prepared a checklist, covering such items as keeping spillways clear of debris and ice, that will help dam owners prevent problems. Through newsletters and news releases, program staff have offered to consult with dam owners or visit individual dam sites to offer suggestions on ways to prevent dam failures.

The Floodplain Management Program has been assisting local county and city officials and answering questions about floodplain insurance and other technical matters involving floodplain regulations. DNRC has a standing agreement with the Department of Transportation to have aerial photos taken in floodplain areas to assist in floodplain delineations and damage estimates.

*Adapted with permission from DNRC Conversation, April 1997, Vol. 3, No. 2*

## RUBY VALLEY RANCHER CO-CHAIRS TASK FORCE

**R**UBY VALLEY RANCHER GEORGE SWAN HAS BEEN INSTRUMENTAL IN FORGING AGREEMENTS ON WATER RESOURCE ISSUES THAT HAVE LED TO ACTION IN THE RUBY RIVER WATERSHED.

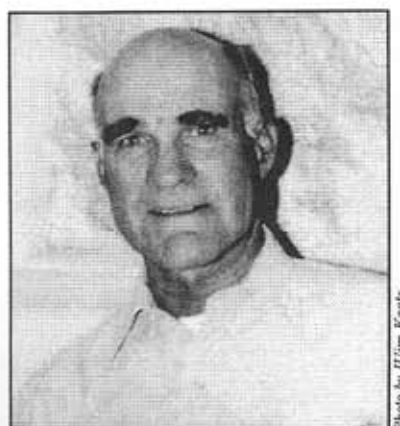
Swan is the co-chair of the Ruby River Reservoir Task Force, a group appointed by the Department of Natural Resources and Conservation (DNRC) in October 1994, after a fish kill occurred in the Ruby River below the reservoir. After only eight months, the task force had reached consensus on a management strategy that protects fish habitat by ensuring there is water in the reservoir as well as the river, while at the same time preserving the rights of irrigators.

After a Department of Fish, Wildlife & Parks (DFWP) proposal to purchase an easement to provide public fishing access to the Ruby River met with controversy, Swan and Ruby River Reservoir Task Force co-chair Paul Moseley appealed to Governor Racicot to allow local task force members to develop an alternative proposal. Racicot agreed, and the Ruby River Access Task Force was formed with Swan serving as co-chair. The Access Task Force accomplished in five months what many thought would be impossible. They developed an alternative plan and provided DFWP with a list of landowners who would be willing to negotiate with the department.

Although none of this could have been accomplished without the efforts of many individuals and the support of the Ruby Valley community, George Swan played a pivotal role. Gary Fritz, administrator of DNRC's Water Resources Division, remarked that "George is an articulate and forceful spokesperson for the Ruby Valley."

Lowell Sauerbier, president of the Ruby River Water Users Association, succinctly stated, "George has good judgment."

George Swan is not content with simply forging agreements; he takes personal responsibility for ensuring that they lead to action. Swan understands the importance of acting immediately, before the momentum behind a positive agreement dissipates.



George Swan

Photo by Julie Korte

He urged DFWP to act quickly on the fishing access plan, and he served as an independent observer in the process of negotiating with landowners. As a result, DFWP has tentative agreements to secure access at five sites on the Ruby River.

When asked why he gets involved in these issues, Swan explains, "I am concerned about the resource — it's the most vital thing we have, and we have to take care of it and ensure that it is used to its fullest extent, yet not exploited." He believes strongly in giving something back to his community. Region 3 fisheries management biologist Dick Oswald commented, "George works tirelessly to the benefit of his community."

Swan is currently working with producers from Montana State University on a videotape about the past, present, and future of the Ruby River Valley. The videotape will be suitable for broadcasting on public television. When asked what the videotape was about, Swan replied, "It's about how you can get something done if you get after it." ☺



## ARIZONA OFFICIALS AGREE TO "BANK" UNUSED COLORADO RIVER WATER



Photo by Granite Reef Underground Storage Project

*Banking the water for a dusty day. The Granite Reef Underground Storage Project has begun direct groundwater recharge for the Arizona Water Banking Authority. The Bank hopes to recharge approximately 60,000 acre-feet of Colorado River water there this year.*

YUMA, ARIZ. — ARIZONA OFFICIALS HAVE SIGNED AGREEMENTS TO STORE MUCH OF THIS YEAR'S UNUSED ALLOTMENT OF COLORADO RIVER WATER IN AQUIFERS.

By banking the water, the state of Arizona halts California from siphoning off the portion of Arizona's annual allotment of 2.8 million acre-feet that goes unused — about 500,000 acre-feet in 1996. The banked water will be available to Arizona cities in case of drought or if supplies from the Colorado are reduced.

Gov. Fife Symington called the agreements with the state, the Central Arizona Project, and seven irrigation districts in Maricopa and Pinal counties historic.

"Thanks to the water bank, rather than watch as our water is siphoned off to Hollywood, we'll bring it home to Arizona where it belongs," Symington said.

The Arizona Water Banking Authority was created last year in part to address the loss of the state's share of Colorado River water to thirsty Southern California and the potential for losses to fast-growing Nevada.

For years, Arizona and five other states dependent on Colorado water did not need their allocated shares, allowing California to take more. But as the West's population surged, those states have urged the government to rein in California.

Water officials in Southern California, which rely on the Colorado for 70 percent of its water supplies, had advance warning of Arizona's intent to store its surplus allotment.

In a recent speech to the Colorado River Water Users Association, Interior Secretary Bruce Babbitt warned Southern California that it must curb Colorado River water use or face federal intervention. California's annual entitlement of Colorado River water is 4.4 million acre-feet.

Jay Malinowski, chief of operations for the Metropolitan Water District (MWD) of Southern California, said last week that he didn't expect Arizona's decision to have an immediate effect on his state.

"We're not jumping up and down and ranting and raving," Malinowski said. "It's an appropriate thing for Arizona to do. We'd do no differently, given the opportunity."

Because the Colorado River is running at full capacity, Malinowski doesn't expect the loss of Arizona's water to have any effect for at least two or three years. MWD has 90,000 acre-feet stored under contract in Arizona," he said.

"In the future, other water districts in California might consider buying some of Arizona's stored surplus, as well," he added.

Plans call for the unused 260,000 acre-feet to be delivered into central and southern Arizona via Central Arizona Project's aqueduct. There it will be stored underground in existing aquifers or through water exchanges with irrigation districts that pump groundwater.

"The underground storage also could be used to respond to Indian water claims in the future," Symington said. ☉

*Reprinted with permission from U.S. Water News, April 1997, Vol. 14, No. 4*

## SOUTHWEST FLORIDA HAVING DRIEST SPELL IN A DECADE

SARASOTA, FLA. (AP) — THERE'S NO END IN SIGHT TO SOUTHWEST FLORIDA'S DRIEST WEATHER IN MORE THAN A DECADE AND PLEAS FOR CONSERVATION HAVEN'T HELPED.

Rainfall in the past 11 months has been more than a foot below normal, sending stream and groundwater levels to record lows in some areas. Meanwhile, government officials' pleas for people to conserve water seem to be falling on deaf ears.

The problem is particularly acute in the southernmost portion of the water management district, including Charlotte County and the city of North Port, that get their water from the rainfall-dependent Peace River. Early last month, the river was at just 15 percent of its normal level. ☉

*Reprinted with permission from U.S. Water News, May 1997, Vol. 14, No. 5*

# MONTANA LEGISLATURE ACTS ON WATER ISSUES

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permits, should continue in Montana while the adjudication process is pending. The law also clarifies the process for modifying or revoking provisional permits after an adjudication is complete. The law creates a priority for water cases certified under the permitting and change authorization statutes when certified to court and transferred to the Chief Water Judge. The bill applies both within and outside of the exterior boundaries of federal reservations, including Indian reservations. The bill creates a new statute under which the department and a tribal government may enter into water administration agreements pending the quantification of federal reserved water rights within the exterior boundaries of an Indian reservation.

*Signed by Governor: 5/1/97*

*Effective Date: 5/1/97*

• **SB0108 - Water Adjudication:**

An act generally revising the water

adjudication laws. Specifically, the bill allows the Water Court in adjudication proceedings to adjudicate the issue of abandonment of existing water rights using post-1973 evidence. Regarding decrees issued after the effective date, the bill provides that claimants must object to the initial decree or run the risk of waiving their objections unless substantial reasons can be given as to why an earlier objection was not made. The bill further amends the law to allow the entry of enforceable temporary, preliminary decrees for either state-based rights or federal reserved rights, as necessary. This allows the Water Court to adjudicate water right claims, or approve federal reserved water right compacts, when necessary and without the need to wait until the other types of claims in the same basin are ready to proceed. The bill also allows claimants to amend their claims or objections at any time before a final decision of the Water Court on the claim or objection. A new

section has been added to the adjudication laws to allow counter-objections in the same manner as counter-objections are allowed in other civil actions. Additionally, the bill authorizes referral of adjudication cases to a settlement master or a mediator. Finally, the bill clarifies the jurisdiction of the district court and the Water Court to clarify the process for administering and enforcing water rights while the adjudication is pending.

*Signed by Governor: 3/28/97*

*Effective Date: 3/28/97*



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1,800 copies of this document were published at an estimated cost of 12¢ per copy.  
The total cost of \$598.20 includes \$216.00 for printing and \$382.20 for distribution.

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